Legislating Against the Threat: The U.S. and Canadian Policy Elite Response to the Terrorist Threat

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Introduction

While it is relatively easy to determine the authorized speakers of security who first identify a given existential threat, it is important to determine this group's initial target audience. All variants of securitization theory posit that the securitization of a given issue is not possible unless the audience accepts it as posing an existential threat. However, the notion of the audience has been left under-theorized by scholars working within this framework. One method of rectifying this lack of clarity concerning the audience is to divide this group into two separate categories: the elite audience and the populist audience. Following this model, the elite audience, which is comprised of members of the policy elite including bureaucrats and elected-officials, serves as an early indicator as to whether or not the securitization of a given issue area has taken place. If there is little to no debate amongst members of the policy elite about the immediate implementation of security measures and policies as well as the creation of institutions to support those policies, then there is a strong indication that securitization has taken place.

Since the securitization of an issue cannot take place without the acceptance of the entire audience, it is important to carefully consider those at whom the securitizing speech acts of designated authorized speakers of security are aimed. Members of the elite audience serve as "first responders" in that they either accept that an issue poses an existential threat and then transmit that threat to the populist audience, or, they reject the threat and thus effectively cancel-out the securitization process. This paper will consider the role of the policy elite in the securitization process and will examine the differences between members of the policy elite in Canada and the United States in order to clarify the role of the elite audience in the securitization process.

Securitization: An Overview

Before examining the response of the Canadian and American policy elite to the 9/11 terrorist attacks, it is necessary to provide some theoretical context. Securitization theory is commonly assumed to be synonymous with the work of the so-called Copenhagen School and its seminal text, "Security: A New Framework for Analysis."[1] This assumption, however, is too simplistic. In fact, there are three variants of securitization theory into which most scholarly works can be categorized: philosophical securitization, sociological securitization, and post-structural securitization. The work of the Copenhagen School, and its initial development of the concept of securitization as the "new framework for analysis" serve as the dominant articulation of this theory; however, this perspective is only one expression of the philosophical variant of securitization.

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[1] Buzan, Barry, Ole Waever, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder: Lynne Rienner Publishers, 1998).

Philosophical Securitization in Theory and Practice

For purposes of this paper, the philosophical variant of securitization theory will be used to assess the ways in which the United States sought to securitize its border in the post-9/11 period. Philosophical approaches to securitization contend that the utterance of the term, 'security' is, in itself, an act that constitutes a threat as existential. This approach places special emphasis on the notion of speech acts as developed by John L. Austin and John R. Searle. Austin first articulated the concept of speech acts in his 1962 text, *How to do Things With Words.* He contends that speech acts "do" things; thus, saying something is doing something.[2] Speech acts emphasize the process by which threats are securitized. Austin posited that these speech acts are conceived as forms of representation that do not simply depict a preference or view of an external reality.[3] Instead, he proposes that, "many utterances are equivalent to actions; when we say certain words or phrases we also perform a particular action."[4] Austin further argued that the point of speech act theory was to challenge the assumption that, "the business of a 'statement' can only be to 'describe' some state of affairs, or to 'state some fact', which it must do either truly or falsely."[5] In keeping with Austin's theory, certain statements do more than merely describe a given reality and, "…as such cannot be judged as false or true. Instead these utterances realize a specific action; they 'do' things – they are 'performatives' as opposed to 'constatives' that simply report states of affairs and are thus subject to truth and falsity tests."[6] Therefore, speech act theory recognizes the ways in which language can do more than just convey information. Austin was especially interested in, "phrases that constitute a form of action or social activity in themselves." These would include such phrases as, "thank you", "I promise", and "You are fired."[7] Scholars in the philosophical securitization tradition have applied Austin's speech act framework to the use of the term, "security." A more nuanced understanding of speech acts suggests that when certain words are used, they have the affect of prioritizing issues.

Speech act theory has been co-opted by philosophical securitization theorists. Waever explains how Austin's theory can be applied to security issues, noting that, "With the help of language theory, we can regard 'security' as a speech act. In this usage, security is not of interest as a sign that refers to something more real; the utterance itself is the act."[8] Waever argues that the process of securitization is initiated by a speech act that serves as a "securitizing move" which marks the transformation of an issue not previously thought of as a security threat to a recognized security issue necessitating an exceptional response.[9] In their seminal work, *Security: A New Framework for Analysis,* Buzan, Waever, and De Wilde note that both internal and external elements must be present in

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[2] Fierke, K.M., *Critical Approaches to International Security* (Cambridge: Polity Press, 2007), 104.

[3] See Williams, Paul, *Security Studies: An Introduction.* (New York: Taylor & Francis, 2008), 69 for further elaboration.

[4] Quoted in: Vaughan-Williams, Nick, Columba Peoples, *Critical Security Studies: An Introduction* (New York: Taylor & Francis, 2009), 77.

[5] Austin, John L., *How to do Things With Words* (Cambridge: Harvard University Press, 1962), 1.

[6] Balzacq, 175. (Need Full Citation Here)

[7] Elbe, Stefan, *Security and Global Health* (New York: Polity Press, 2010), 11.

[8] Ole Waever, "Securitization and Desecuritization," in Ronnie D. Lipschutz, ed., *On Security* (New York: Columbia University Press, 1995): 55.

[9] Vaughan-Williams and Peoples, *Critical Security Studies,* 78.

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order for a speech act to be accepted by its intended audience. First, among the internal conditions of speech acts, "the most important is to follow the security form, the grammar of security, and construct a plot that includes existential threat, point of no return, and a possible way out – the general grammar of security as such plus the particular dialects of the different sectors, such as talk identity in the societal sector, recognition and sovereignty in the political sector, … and so on."[10]

In contrast, the external aspect of a speech act has two main conditions. The first is the social capital of the enunciator, the securitizing actor, who is in a recognized position of authority. The second external condition relates to the actual threat. Buzan et. al. explain that, "it is more likely that one can conjure a security threat if certain objects can be referred to that are generally held to be threatening."[11]

While the philosophical tradition centers on the speech acts themselves as the focus of securitization, the securitizing actors and audience are another important component of this theoretical model. Speech acts do not occur in a vacuum – they are embedded, "rhetorically, culturally, and institutionally in ways that make them somewhat predictable and not wholly open or expandable."[12] Security as speech act occurs in structured institutions where some actors are in positions of power by being generally accepted voices of security; by having power to define it. Buzan and his colleagues note that securitization relies upon, "existential threats, emergency action, and effects on inter-unit relations by breaking free of the rules. It continues to be structurally focused in existing authoritative structures."[13] In this respect, the philosophical approach to securitization seems to be premised on statist conceptions of security. This approach holds that it is often "the state" that initiates the securitizing speech act. Buzan and his colleagues explain that, in contrast to the post structural approach to security studies, the Copenhagen School (which is situated in the philosophical tradition), "abstain(s) from attempts to talk about what 'real security' would be for people, what are 'actual' security problems larger than those propagated by elites and the like."[14] Although typically classified as a "critical approach to security studies", the philosophical variant of securitization theory accepts the state as a valid referent object, and ignores the emancipatory agenda adopted by other critical methodologies.[15] While there is nothing explicitly prohibiting this approach from being applied to groups other than states, there is a notion that, "at the heart of the security concept we still find something to do with defense and the state."[16]

The Copenhagen School of Security Studies (or CS) serves as the most recognizable articulation of the philosophical approach to securitization. The label, "Copenhagen School" was given to the collective research agenda of various academics at the (now

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[10] Buzan et. al, Security: A New Framework for Analysis, 33.
[11] Ibid.
[12] Hudson, Natalie Florea, Gender, Human Security and the United Nations: Security Language as a Political Framework for Women (New York: Taylor& Francis, 2009), 31.
[13] Buzan et. al., Security: A New Framework for Analysis, 26.
[14] Ibid, 35.
[15] This is in contrast to the post structural approach to securitization theory, as will be discussed later.
[16] Waever, "Securitization and Desecuritization," 47.

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defunct) Copenhagen Peace Research Institute in Denmark. This term was applied specifically to the work of Buzan and Waever. The label "Copenhagen School" itself and its central concepts, "developed over time, less initially as a specific project for the study of security than as a series of interventions on different concepts and cases."[17] The CS agenda ultimately came to represent the fusion of two significant conceptual and theoretical innovations in security studies: Barry Buzan's notion of different sectors of security—first articulated by Buzan in, "Peoples, States, and Fear" in 1983 and later updated by Buzan in1991—and Ole Waever's conception of 'securitization.'[18] The collaborative work of the CS culminated in the 1998 publication of, "Security: A New Framework for Analysis," by Barry Buzan, Ole Waever, and Jaap de Wilde. This work became the foundational text of the Copenhagen School's research agenda. The Copenhagen School can be classified as a philosophical approach to securitization theory because it seeks to, "emphasize that social constructions often become sedimented and relatively stable practices."[19] It follows that the task, in philosophical securitization theory, is not only to criticize this sedimentation but also to understand how the dynamics of security work so as to change them.

The research agenda of the so-called "Copenhagen School" sought to broaden the concept of security; however, instead of widening the debate over what constituted a "security" threat, the CS sought to, "displace the terms of the dispute from security sectors to rationalities of security framing."[20] To this end, the CS extends the breadth of "security" beyond the traditional politico-military sphere to what it identifies as the five discrete political, economic, environmental, military, and societal sectors.[21] The primary question addressed in "Security: A New Framework for Analysis," is how to define what is and what is not a security issue in the context of a broadened understanding of security. Buzan, Waever, and de Wilde argue that if the security agenda is broadened, then there is a need for some sort of analytical grounding or principle to judge what is and what is not a security issue; otherwise, there is a danger that the concept of 'security' will become so broad that it covers everything and hence becomes effectively meaningless.[22] The CS posits that "security" is primarily about survival. Thus, "Security action is usually taken on behalf of, and with reference to, a collectivity. The referent object is that to which one can point and say, 'It has to survive, therefore it is necessary to…'."[23] Accordingly, whether the referent object of security is an individual, group, state, or nation, "security" is an ontological status, that of feeling security, which at any one time may be under threat from a number of different directions.

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[17] Williams, *Security Studies*, 68.

[18] Vaughan-Williams and Peoples, *Critical Security Studies*, 76; Also, see Waever 1995 for an earlier iteration.

[19] Fierke, Critical Approaches to International Security, 102.

[20] Huysmans, Jef, The Politics of Insecurity: Fear, Migration, and Asylum in the EU (New York: Routledge, 2006), 28.

[21] For further elaboration see Donreuther, Roland, *International Security: The Contemporary Agenda* (New York: Polity, 2007), 42.

[22] For further elaboration refer to Vaughan-Williams and Peoples, *Security Studies,* 76.

[23] Buzan et. al., Security: A New Framework for Analysis, 36.

The CS employs a methodology that seems to draw heavily from the theoretical assumptions of constructivism. The key constructivist insight of the Copenhagen School is to, "shift attention away from an objectivist analysis of threat assessment to the multiple and complex ways in which security threats are internally generated and constructed."[24] In this way, the CS brings greater nuance to the constructivist argument that security is not an objective condition but the outcome of a specific kind of social process, susceptible to criticism and change. The CS research agenda denies the existence of any objectively given preconditions and circumstances in politics. This conceptualization of securitization rejects the realist assumptions that, "groups are formed in response to threats from the outside."[25] There is no such thing as an objective security concern because *any* public issue may be identified by the actors as political or non-political or as posing a threat to the community writ large. Although they criticize mainstream constructivism for its deliberate state-centrism, the CS remains, "firmly within methodological collectivism saying that not only states, but also other units such as nations, societies, social movements, and individuals, can act as agents in the name of collective referent objects."[26] The Copenhagen School's social constructivist tendencies are especially evident in its distinction between the subject and object of security. According to the suppositions of constructivism, there is no implicit, objective, or given relation between the subject – the security actor – and the object of securitization. Rather this relation is constructed intersubjectivity through social relations and processes.[27]

Differentiating Between the Elite and Populist Audiences

In order for the securitization of a given issue to take place, that issue must be accepted as posing an existential threat to the security of the state by the audience. The importance of the role of the audience cannot be overstated in securitization theory. For this reason, it is crucial for the philosophical variant of securitization theory to offer a clear conceptualization of who constitutes the audience and how this group's acceptance or rejection of a given threat can be assessed.[28] This weakness in clearly delineating the composition and role of the audience in securitization theory has even been acknowledged by the theory's founder, Ole Waever, who recognized that the concept of 'audience,' "… needs a better definition and probably differentiation."[29] Previous scholarly attempts to assess the philosophical variant of securitization theory have remained vague about the composition of the audience. It is not clear what the acceptance by the audience means and entails exactly, and, therefore, how this acceptance or rejection of a given threat could be identified in practice.

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[24] Donnreuther, International Security, 42.

[25] Kolsto, Pal, Media Discourse and the Yugoslav Conflicts: Representations of the Self and Other (New York: Ashgate Publishing, Ltd., 2009), 10.

[26] Aalto, Pami, Constructing Post-Soviet Geopolitics in Estonia (New York: Routledge, 2003), 44.

[27] Buzan et. al., *Security: A New Framework for Analysis*, 30 – 31; Gobbicchi, Alessandro, *Globalization, Armed Conflict and Security* (Rubbettino Editoe, 2004), 212.

[28] For further discussion of the importance of better articulating the role of the audience refer to: Sarah Leonard and Christian Kaunert, "Reconceptualizing the Audience in Securitization Theory," In Thierry Balzacq, ed. *Securitization Theory: How Security Problems Emerge and Dissolve* (New York: Routledge, 2011): 57 – 62.

[29] Waever, "Securitization and Desecuritization," 26; While Waever recognized the need to clarify the role of the audience, his work does not offer suggestions for better defining this concept.

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In order to utilize the philosophical variant of securitization theory as a means of assessing the policy response of a state to a given threat, it is necessary to address some of the challenges pertaining to the role of the audience that are inherent in this theoretical construct. Scholars agree that there is a need to clearly delineate the role of the audience in securitization theory. One-way of addressing this lack of clarity is to view the audience as comprising two separate groups: the elite audience, and the populist audience. The elite audience is comprised of policy elites such as elected officials and bureaucrats as well as the media.[30] This faction of the audience must accept or reject an existential threat articulated by an authorized speaker of security. If the elite audience accepts that there is an immediate threat to the state, then this group enacts policy decisions and creates institutions to combat that threat. In addition, it informs the public of the imminent danger. The populist audience, comprised of the voting public of a given state, must then accept or reject the threat being promulgated by the elite audience.

Members of the Policy Elite as Elite Audience Members

According to the Copenhagen School, members of the policy elite, which includes bureaucrats and elected state officials, comprise half of the elite audience. The Copenhagen School explains that, in the case of issues affecting national security, this policy elite audience, "influence(s) the dynamics of the sector without being either referent objects or securitizing actors."[31] This audience group is important since, "… subunits within the state are of interest in military security terms either because of an ability to shape the military or foreign policy of the state or because they have the capability to take autonomous action."[32] In other words, the policy elite is tasked with implementing measures aimed at countering a given threat that has been articulated by the authorized speakers of security. If the policy elite accept that a given issue poses an imminent threat, then they, "… have the ability to influence the making of military and foreign policy; this is the familiar world of bureaucratic politics."[33] This bureaucratic process is the first step on the continuum of acceptance or rejection of a given threat by the wider audience.

The first stage of acceptance (or rejection) of an existential threat takes place within a bureaucratic field in which many agencies, ministries, or actors are all seeking executive attention, public imagination, and public funding. Members of the policy elite operate within prescribed frameworks. For example, elected officials must operate within the boundaries prescribed by their elected positions, while bureaucrats must operate within the limits of their departmental mandates. The policy elite can be likened to Max Weber's conception of social administration, which he proposed, "… was a product of the rationalization process – procedural, bureaucratic means to carry out rules of legitimacy and legal authority."[34]

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[30] The next chapter will examine the role of the media as a component of the elite audience.

[31] Buzan et. al., Security: A New Framework for Analysis, 56.

[32] Ibid.

[33] Ibid.

[34] Quoted in Kevin Walby and Sean P. Hier. "Risk Technologies and the Securitization of Post-9/11 Citizenship: The Case of National ID Cards in Canada," *Working Paper.*

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Defining the Policy Elite

Building on definitions of the "public policy elite" proposed by Lomax Cook and Skogstad, for the purposes of this analysis, the term, "policy elite" can be defined as consisting of two groups. One is the political elite, such as elected officials at the national, state, and local levels. The other group is made up of administrative officers and employees of the national and provincial governments and superintendents in government offices.[35] This group comprises decision-makers are who considered to have a high-level of expertise in specific issue-areas and, as a result of this expertise, often have privileged access to others concerned with the same issue areas. As a result of their positions, members of the policy elite concerned with a specific area of responsibility (as for example, public health) would be able to contact and meet the top executives of multinational companies concerned with this area (such as Bayer) or with high-ranking members of an international agency (such as the WHO).[36] This group gains its expertise in a variety of ways: by working their way up in the public bureaucracy within a specific ministry, gaining experience in private corporations, as university researchers, in labor unions, in law firms, and in many other places.[37] The common characteristic for all members of the policy elite is that they are involved in either making or implementing policies either in government or private organizations at the top levels.

While members of the policy elite possess a high level of expertise in specific issue areas, they do not form a "ruling class" that can be viewed as a cohesive structure. Dahl notes that, "Like intellectuals generally, policy elites are a diverse lot."[38] This is to say that policy elites do not all share a unified agenda. They do not all think alike, or move in lockstep to advance a collective outcome. Birkland explains that these elites are not static entities. Thus, "while the American system of government favors more powerful and more focused economic interests over less powerful, more diffuse interests, often the less powerful interests – or, disadvantaged interests – can coalesce and, when the time is right, find avenues for the promotion of their ideas."[39] At the same time, newly elected government administrations often seek to replace existing policy elites with those who will be more sympathetic to the governing party's policy agenda.

Theoretical Origins of the Policy Elite – Democratic Theory and Rational Choice

As a component of the elite audience, members of the policy elite are intrinsically bound by a symbiotic relationship with members of the general public. The notion of a policy

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[35] This definition borrows from wording used in the definition of "policy elite" prescribed by M. Manisha and Sharmila Mitra Deb, *Indian Democracy: Problems and Prospects.* (Anthem Press, 2009), 183; Fay Lomax Cook with J. Barabas and B. Page. "Invoking Public Opinion: Policy Elites and Social Security," *Public Opinion Quarterly* 66:2 (2002); Grace Skogstad, "Policy Paradigms, Transnationalism, and Domestic Politics.

[36] Buse, Kent, Nicholas Mays and Gill Walt, *Making Health Policy:* Second Edition (Maidenhead: Open University Press, McGraw-Hill Education Edition, 2012), 6-7.

[37] For a more extensive list of where members of the policy elite gain their expertise see: Dahl, Robert A., *Democracy and Its Critics* (Yale University Press, 1991), 335.

[38] Dahl. Democracy and Its Critics, 335.

[39] Birkland, Thomas A., An Introduction to the Policy Process: Theories, Concepts, and Models of Public Policy Making – Third Edition (New York: M.E. Sharpe, Inc., 2011), 168 – 169.

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elite – a group of area-specific policy specialists – is grounded in democratic theory, which asserts that, "… democracy is supposed to involve policy makers paying attention to ordinary citizens – that is, the public."[40] Thus, while members of the policy elite are influenced by authorized state speakers – the executive authority within a given state - they are also expected to demonstrate concern for the public sentiment. Page cites studies suggesting that, "… ordinary citizens have tended to be considerably less enthusiastic than foreign-policy elites about the use of force abroad, about economic or (especially) military aid or arms sales, and about free trade agreements."[41] Members of the policy elite must be cognizant of public opinion. Since members of this group are elected by the people, they are held responsible for their policy decisions by the public at election time.

This symbiotic relationship between members of the policy elite and the general public is further reinforced by rational choice theorists who suggest that, "… public officials in a democracy have reason to pay attention to public opinion."[42] Advocates of the rational choice model have long argued that vote-seeking politicians are compelled to advocate and enact policies favored by a majority of voters.[43] Black explains that, "If citizens' preferences are 'jointly single peaked' (i.e. uni-dimensional), the median voter theorem indicates that politicians' rhetoric and policies should exactly reflect the preferences of the average voter."[44]

This reciprocal relationship between members of the voting public and members of the policy elite has important implications regarding the securitization of a given policy issue area. There is substantial scholarly evidence of rather close connections between citizens' preferences and public policies. These studies have found a significant correspondence between national policies and majority opinion at one moment in time[45], between policies in several states and the liberalism or conservatism of public opinion in those states[46], and between changes over time in public opinion and public policy[47]. While members of the policy elite must either accept or reject a securitizing move made by the authorized speakers of security (often the executive power within a state), this group must also gauge whether or not the public has accepted or rejected the initiation of a securitizing move. For example, while the executive power of the state can make speeches alerting

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[40] Cook et. al, "Invoking Public Opinion, 236.

[41] Page, Benjamin I., *Who Deliberates? Mass Media in Modern Democracy* (Chicago: University of Chicago Press, 1996), 118.

[42] Cook et. al, "Invoking Public Opinion, 237.

[43] Otto A. Davis and Melvin Hinich, "A Mathematical Model of Policy Formation in a Democratic Society." In Joseph L. Bernd, ed., *Mathematical Applications in Political Science* (Dallas: Southern Methodist University Press, 1966): 175 – 205.

[44] Black, Duncan, *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958), Chapter Four.

[45] Alan D. Munroe, "Public Opinion and Public Policy, 1980 – 1993," *Public Opinion Quarterly* 62:1 (1998): 6 – 28.

[46] Erikson, Robert S., Gerald C. Wright, and John P. McIver, *Statehouse Democracy: Public Opinion and Policy in the American States* (New York: Cambridge University Press, 1993).

[47] Christopher Wlezien, "The Public as Thermostat: Dynamics of Preferences for Spending," *American Journal of Political Science* 39:4 (1995): 981 – 1000; Larry M. Bartels, "Constituency Opinion and Congressional Policy Making: The Reagan Defense Buildup," *American Political Science Review* Vol. 85 (1991): 457 – 474.

the public to the threat of an imminent attack, if the public does not accept that there is an existential danger to the state, then the policy elite will have to consider both the claims made by the authorized speakers of security and the beliefs of the public before generating a response. Since the securitization of a given issue area is contingent on the acceptance or rejection of a given threat by the entire audience, it is sometimes the case that the elite audience is influenced by the acceptance or rejection of a threat by the populist audience. Thus, if the populist audience rejects an authorized speaker's articulation of imminent danger, then the elite audience will not implement measures that would reinforce the securitization of the issue. Ultimately, the two audience groups (elite and populist) form a sort of feedback loop with one group affecting the acceptance or rejection of the threat by the other audience group.

How do Members of the Policy Elite Advance or Reject the Securitization Process?

As a component of the elite audience, the relationship between the policy elite of a given state and the general public is relevant to the role the former plays in either advancing or rejecting the securitizing move initiated by the authorized speakers of security. The Copenhagen School suggests that the role played by the elite audience in the securitization process is somewhat minimized in the case of persistent security threats that have become institutionalized. In these cases, "… urgency has been established by the previous use of the security move. There is no further need to spell out that this issue has to take precedence."[48] This does not mean that issues already recognized as threats to the state are not securitized, on the contrary, these issues were most likely first established through a securitizing move, and are often continuously justified through the discourse of security.[49] The Copenhagen School uses the example of dykes in the Netherlands – there is already an established sense of urgency concerning the potential for catastrophic floods in that state; therefore, members of the policy elite do not need to be persuaded by authorized speakers of security to enact measures to protect the state's system of dykes – the need for immediate action has already been recognized. It follows that, when the existence of an existential threat has been legitimized within the state by security rhetoric, "… it becomes institutionalized as a package legitimization, and it is thus possible to have black security boxes in the political process."[50] Therefore, the policy elite are likely to respond quickly to developments related to a threat that has already been articulated by the authorized speakers and accepted by the state audience.

Following the acceptance of an issue as posing an imminent security threat, members of the policy elite advance the securitization process by implementing policies and creating institutions aimed at responding to the threat. Mabee explains that the recognition of this entrenchment of issue-specific securitization is important because it draws attention to specific threats as well as to the broader threat environment of a state. He notes that, "the creation of new state security institutions and their reproduction, is dependent to a certain extent on the existence of a discourse about their necessity and actual role."[51] The

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[48] Buzan et. al., Security: A New Framework for Analysis, 28.

[49] Ibid.

[50] Ibid.

[51] Bryan Mabee, "Re-Imagining the Borders of U.S. Security After 9/11: Securitization, Risk, and the Creation of the Department of Homeland Security," *Globalizations* 4:3 (Summer 2007): 388.

institutionalization of a specific threat affects the ways in which the policy elite will respond to that threat. Therefore, the institutionalization of a specific threat as posing imminent danger to the state will, over time, result in the reification of a particular kind of state, which is, "… geared institutionally towards specific ways of both deciding what is a threat and responding to threats."[52] Threats that have been institutionalized within a state are subject to prescribed responses that are consistent with previous attempts to address those threats.

Issues that have been institutionalized and are therefore accepted as warranting an immediate, securitized response are often automatically, "… placed beyond the realm of 'reasonable public scrutiny' and given an unwarranted basis of legitimacy."[53] In these cases, securitization is taken for granted and the need to convince the audience of the validity of a threat is removed. Securitization, then, "… can be seen as an act that successfully fixes the definition of a situation as one encapsulated with 'threat', thereby excluding other possible constructions of meaning."[54] When a threat has been institutionalized, the security environment of the state and its preconceived notions of what constitutes an appropriate response limit the actions taken by the policy elite in response to that threat.

The different spheres in which members of the policy elite find themselves further influences the response of this group to an articulated threat. The 'acceptance' of the audience and the 'resonance' of an existential threat is different in different spheres and is shaped by the different institutional bounds that constrain the actions of members of the policy elite. For example, Sociological securitization specialist, Salter, notes that, "Within the security sphere, different narratives are deployed for security threats in different sectors, different characters may attempt a securitizing speech act, and the relationship between the audience and the performer structure how those speech acts are made and received."[55] The actions of members of the policy elite are constrained by their individual roles within the bureaucracy. For example, a Finance Minister will not respond to the threat of foreign invasion in the same manner as a Minister of Defense. While both officials may accept the validity of an impending threat, their individual responses are bounded by the mandates of their elected positions. The restrictions of bureaucratic groupthink will influence the individual responses of members of the policy elite.

The American Policy Elite in the Post-9/11 Period

 The response of the American policy elite to the terrorist attacks of September 11, 2001, provides a strong indicator that the elite audience in the United States accepted the securitizing move initiated by President Bush. As Robert Johnson has noted, in the United States, security issues are generally filtered through a political process that is

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[52] Ibid, 389.

[53] Kyle Grayson, "Securitization and the Boomerang Debate: A Rejoinder to Liotta and Smith-Windsor," *Security Dialogue* 34:3 (2003): 339.

[54] Lene Hansen, "The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School," *Millenium* 29:2 (2000): 306.

[55] Mark B. Salter, "Securitization and Desecuritization: A Dramaturgical Analysis of the Canadian Air Transport Security Authority," *Journal of International Relations and Development* 11:4 (2008): 330.

characterized by a lack of consensus among policy elites.[56] The American congressional decision-making process is characterized by a diffusion of power, whereby policy decisions are the result of disaggregated and pluralistic opinions. Although the President generally has the most power with regard to agenda setting, he depends on Congress to appropriate funds for the measures he proposes, and Congress can block issues or push forward others that the President has not chosen.[57] Terrorism normally appears on the national policy agenda as a result of highly visible and symbolic attacks on the American populous or American property.[58] The way that members of the American Congress address the threat of terrorism is indicative of that body's perceived threat level. This typical lack of Congressional consensus was notably diminished in the period immediately following the 9/11 attack. Instead, Republican and Democratic members of the House and Senate worked together to initiate security policies aimed at countering the terrorist threat. This bi-partisan cooperation is indicative of the deference theory, and strongly suggests that this component of the elite audience wholly accepted the securitizing move initiated by the executive.

Congressional Response to 9/11 – The Relevance of the Deference Thesis

The 9/11 attacks on the United States served to turn the Congressional agenda completely on its head. When members of Congress returned to Washington after Labor Day, they expected to resume debate on a long list of domestic issues including: campaign finance reform, a patient's bill of rights, and Medicare reform, to name a few.[59] Instead, the attack immediately shifted all discussion to the threat of terrorism and the government's response to the threat. Domestic issues that once seemed pressing were put on hold as questions about homeland defense and security dominated the political agenda. The Congressional response to the 9/11 attacks demonstrates that members of the policy elite had accepted the securitizing move initiated by President Bush. The response of this group was indicative of the deference theory, which posits that, in times of crisis, members of the House and Senate should defer to the executive. Ultimately, an examination of the USA PATRIOT Act signals that members of the American policy elite accepted the securitizing move made by the authorized speaker of security, and opted to defer to the executive branch when legislating a response to the threat.

The Congressional response to the attacks of September 11 demonstrates three indicators that the policy elite had accepted the securitizing move initiated by the executive. First, the threat was accepted by members of the House and Senate as the only issue warranting discussion in Congress. When Congress resumed following the summer break, the sole topic on the agenda was to address the threat of terrorism and to strengthen homeland security efforts. Members of Congress sought to address whether or not to authorize the

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[56] Johnson, Robert, Improbable Dangers: U.S. Conceptions of Threat in the Cold War and After (New York: St. Martin's, 1997), Ch. 2, 31-48.

[57] For more details on agenda-setting in Congress see Martha Crenshaw, "Counterterrorism Policy and the Political Process," in Russell D. Howard and Reid L. Sawyer, eds., *Terrorism and Counterterrorism: Understanding the New Security Environment.* (Guilford: McGraw-Hill/ Dushkin, 2004), 450 – 454.

[58] See for example, Birkland, After Disaster: Agenda Setting, Public Policy, and Focusing Events.

[59] James M. Lindsay, "Congress After 9/11," in James M. Lindsay, ed., *American Politics After September 11* (Cincinnati, OH: Atomic Dog Publishing, 2005): 79 – 84.

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President to use military force against those responsible for the terrorist attacks and decided that a military show of force was necessary. Next, they considered whether or not to re-write state counter-terrorism laws and determined that these laws would have to be re-assessed. Finally, members of the House and Senate debated overhauling the whole process of airport security and decided that this too was an area where policy reform was necessary. In the days following the terrorist attacks on the United States, members felt an urgency to act quickly to address what had happened. Members of Congress worried that moving slowly might leave the United States and the American people vulnerable to future attacks. [60] This acceptance of the potential for future terrorist attacks as posing an existential threat to the state, resulted in the removal of all other topics from the political agenda. Counter-terrorism and homeland security were recognized as being the only topics worthy of consideration given the pervasive threat environment.

The second indicator that the securitizing move had been accepted in the wake of the 9/11 attacks, was that the issue of government financing for the various counter-terrorism measures being proposed was notably absent from discussion. While it was generally accepted that new measures be implemented immediately to address the threat of future attacks on the state, no one was asking about the price tag for all of these new initiatives. Lindsay notes that, "In the aftermath of the terrorist attacks, the hottest topic during the summer of 2001 – how could Congress preserve the federal budget surplus? – disappeared from the political agenda."[61] There was a notion that the need to respond to the attacks and prevent future attacks was more important than balancing the federal budget. The enormity of what had happened out weighted any desire for fiscal constraint.

Finally, bi-partisan cooperation between Republicans and Democrats increased as members of both parties sought to respond to the 9/11 terrorist threat. The clearest example of this bi-partisan cooperation took the form of the September 14 Authorization for Use of Military Force (AUMF) resolution authorizing President Bush to use all necessary and appropriate force against those responsible for perpetrating the 9/11 attacks on the United States. The AUMF was passed into law by the Senate, without debate, in a roll call vote. This resolution provided that, "The President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent future acts of international terrorism against the United States by such nations, organizations, or persons."[62] The AUMF is an important example of the Republican-Democrat cooperation in the period following the 9/11 attacks because this resolution was a, "… broad grant of authority to use force against both nations and non-state actors. It focused on the use of force of those responsible for the attacks and as a means to prevent future attacks."[63] Such a resolution, with serious implications for the future of American foreign policy,

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[60] Lindsay, "Congress After 9/11," 80.

[61] Ibid.

[62] PL 107-40; 115 Stat. 224. Also quoted in David Abramowitz, "The President, the Congress and the Use of Force," *Harvard Journal of Legislation* 43:71 (2002).

[63] Roach, Kent, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge: Cambridge University Press, 2011), 174.

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would not have passed without debate if it was not generally accepted by members of Congress that the potential for future attacks warranted an immediate and wide-sweeping response.

The U.S. Congress and the Deference Thesis

The cooperation of Republicans and Democrats in the House of Representatives and the Senate can be explained by what Eric Posner has called the "Deference Thesis." This thesis posits that, "… legislatures, courts, and other government institutions should defer to the executive's policy decisions during national security emergencies."[64] This concept has evolved from the notion of colonial political defense, which held that deference to colonial authority in times of crisis constituted the central ingredient in colonial political ideology.[65] In the American political system, events requiring a legislative response are filtered through a political process that is characterized by a lack of consensus among political elites.[66] Crenshaw notes that, "… the decision-making process is disaggregated and pluralistic, and power is diffused."[67] Since it would be impossible for all issues to be dealt with simultaneously, political elites – the President, different agencies within the executive branch, Congress, the media, and 'experts' in academia as well as the consulting world – compete to set the national policy agenda. In normal times, that is, when the state does not see itself to be in imminent danger, the three branches of government (executive, legislative, and judicial) share power through a series of checks and balances. The President needs legislative approval in order to take action on a given issue. At the same time, the judicial branch reviews the policies set by the legislative branch and signed into law by the executive in order to ensure their conformity with pre-existing legislation. Thus, while the President typically retains agenda-setting power, he depends on Congress to appropriate funds for the measures he proposes, and Congress can block issues or push forward others that the President has not chosen. According to the deference thesis, these checks and balances should disappear in times of crisis, granting the President exclusive power in legislating a response to the crisis.

The deference thesis states that in times of imminent threat, both the legislative and judicial branches of government should defer to the executive. Posner explains that the thesis, "… assumes that the executive is controlled by the President, but to the extent that the President could be bound by agents within the executive, the deference thesis also holds that those agents should follow the President's orders, not the other way around."[68] Clearly, while the legislative and judicial branches of government are eager to assert their constitutional prerogatives in times of relative state security, the recognition of an existential threat to state security causes these branches of power to adopt a "rally 'round

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[64] Eric A. Posner and Adrian Vermeule, "Terror in the Balance: Security, Liberty and the Courts," *Public Law and Legal Theory Working Paper* (The Law School, The University of Chicago, 2007): 15.

[65] For further elaboration on the origins of the Deference Thesis refer to, John B. Kirby, "Early American Politics – The Search for Ideology: An Historiographical Analysis and Critique of the Concept of Deference," *The Journal of Politics* 32:4 (November 1970): 808 – 838.

[66] Johnson, U.S. Conceptions of Threat in the Cold War and After, 31 – 48.

[67] Crenshaw, "Counterterrorism Policy and the Political Process," 450.

[68] Eric A. Posner, "Deference to the Executive in the United States After 9/1: Congress, the Courts and the Office of Legal Counsel," *Public Law and Legal Theory Working Paper No. 363.* (The Law School, The University of Chicago, September 2011): 2.

the flag" mentality that is marked by deference to executive authority. Ultimately, the change in Congressional/ Presidential relations precipitated by the 9/11 attacks was not unprecedented.

A historical overview of power relations between the legislative and the executive branches of government throughout American history supports the deference thesis. In times of peace and security, Congress can be seen to defy executive authority in favor of more aggressive policy setting. In contrast, Congress will defer to presidential executive authority when there is a recognized, imminent threat to the state. Lindsay asserts that, "The pendulum of power on foreign policy has shifted back and forth between Congress and the President many times over the course of history."[69] In the latter half of the nineteenth century, a time of relative security from external threats, Congress dominated the creation of foreign policy. Following the start of World War I, the executive branch regained its foreign policy supremacy; however, the end of the First World War saw this power returned to Congress as members of the House and Senate sought to avoid America's involvement in what was viewed as "Europe's problems." The bombing of Pearl Harbor invalidated the isolationist tendencies of Congress and returned decision-making authority to President Roosevelt. Following the Second World War, concerns over Soviet aggression saw more policymakers step to the sidelines on defense and foreign policy issues. This lead to the so-called "imperial presidency" of the 1960s, which saw members of Congress, "…stumbling over each other to see who can say 'yea' the quickest and the loudest."[70] The Cuban Missile Crisis stands out as perhaps the clearest example of the American Congress deferring to President Kennedy. This deference to presidential authority came to an end with souring public opinion about the Vietnam War.

The deference thesis provides a useful tool for examining whether or not members of the policy elite have accepted an issue as posing an existential threat to the state. How aggressively Congress exercises its policy-making authority is a direct result of whether or not members of the House and Senate see the state as being threatened or is secure. This deference thesis has clear implications for the philosophical variant of securitization theory. If Congress, or the elite audience in general, acquiesces to the requests of the executive, those authorized speakers of security, then there is a high probability that the process of securitization has been initiated. An examination of the USA PATRIOT Act demonstrates Congressional deference to the President following the 9/11 terrorist attacks.

The USA PATRIOT Act and Congressional Deference to Presidential Authorities

The USA PATRIOT Act: An Overview

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[69] James M. Lindsay, "Deference and Defiance: The Shifting Rhythms of Executive-Legislative Relations in Foreign Policy," *Presidential Studies Quarterly* 33:3 (September 2003): 531.
[70] Sundquist, James L., *The Decline and Resurgence of Congress* (Washington, D.C.: Brookings Institute, 1981), 125.

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"USA PATRIOT Act" is a somewhat Orwellian acronym that stands for, "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism."[71] This three hundred and forty-two page Act was drafted and passed by overwhelming majorities in both the House and Senate, and signed into law by President Bush on October 26, 2001 – just six weeks after the 9/11 attacks. This Act was enacted in response to the terrorist attacks of September 11 to demonstrate to the American public that the state was not entirely helpless against the terrorist threat. Gouvin explains that, "Bringing the terrorists 'to justice' would have been an excellent way to make that demonstration. Unfortunately, fighting the human combatants in a terrorist war is extremely difficult."[72] This Act gave the Secretary of the Treasury greater regulatory powers in order to address the potential for corruption of U.S. financial institutions for money laundering purposes. Further, it sought to prevent future terrorists from entering the United States and allowed for the detention and removal of those non-citizens identified as posing a potential threat. The Act created new crimes, new penalties, and new procedural efficiencies for use against domestic and international would-be terrorists.[73] Recognizing that intelligence collection and dissemination amongst governmental institutions would be important in attacking the threat of potential terrorist attacks, the USA PATRIOT Act gave federal officials and law enforcement personnel greater authority to track and intercept personal communications for intelligence gathering purposes.

The USA PATRIOT ACT was predicated on an understanding that intelligence reform was an important component of the state's counterterrorism strategy. Building on the Antiterrorism Act of 1996, enacted in the wake of the 1995 Oklahoma bombings, the USA PATRIOT Act sought to update standard intelligence procedures in order to increase their relevance in the information age.[74] One of the functions of the Act was to "tear down walls" existing in the 1996 legislation that prevented the sharing of intelligence between different organizations and hindered inter-agency information sharing and coordination. There was general consensus, in Congress - that it was necessary to tear down the regulatory "walls" that prevented anti-terrorism intelligence agents and anti-terrorism criminal agents from sharing information. Heather McDonald, Senior Fellow at the Manhattan Institute for Policy Research, explained in a Senate Committee hearing that these regulatory walls, "… were neither constitutionally nor statutorily mandated, but their effect was dire: they torpedoed what was probably the last chance to foil the 9/11 plot in August 2001."[75] In order to facilitate inter-agency

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[71] Uniting and Strengthening America by Providing the Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001, Pub. L. No. 107 – 56 ξ 802, 115 stat/ 272, 376 (2001).

[72] Eric J. Gouvin, "Bringing Out the Big Guns: The USA PATRIOT Act, Money Laundering, and the War on Terrorism," *Baylor Law Review* Vol. 55 (Fall 2003): 958.

[73] Charles Doyle, CRS Report for Congress: Received Through the CRS Web. *The USA PATRIOT Act: A Sketch.* (Congressional Research Service, The Library of Congress: April 18, 2002), 1.

[74] For more information on the Antiterrorism Act of 1996 refer to Dempsey, James X. and David Cole, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security: Second Edition* (New York: The New Press, 2006).

[75] Prepared Statement of Heather McDonald. USA PATRIOT Act, "Hearing Before the Select Committee on Intelligence of the United States Senate One Hundred Ninth Congress First Session," (April 19, 2005; April 27, 2005; May 24, 2005) Printed for the use of the Select Committee on Intelligence. U.S. Government Printing Office Washington: 2006b, available at: *http://www.acess.gpo.gov/congress/senate*.

intelligence collaboration, Section 203 of the Act permits unprecedented sharing of sensitive information sources across several independent agencies, including the FBI, CIA, INS, and other state and federal organizations. Section 214 of the Act increased the power of the FBI to allow it to access both criminal and foreign intelligence cases so long as a judge ruled that the information would be 'relevant' to an on-going investigation. Perhaps more shockingly, Section 215 of the Act changed the law surrounding record checks so that third party holders of financial, library, travel, video rental, phone, medical, church, synagogue, and mosque records can be searched without the knowledge or consent of the target.[76] It seems clear that, with these reforms to intelligence collection and data sharing, Congress was willing to sacrifice concerns over personal privacy in favor of enhanced national security.

Under the pretense of enhancing national security and reforming intelligence collection as well as inter-agency cooperation, the USA PATRIOT Act increased the power of the executive branch of government, while decreasing judicial oversight. Examples of this enhanced executive power include Section 802 of the Act, which created a new crime – "domestic terrorism" – that includes any dangerous acts that, "… appear to be intended… to influence the policy of a government by intimidation or coercion."[77] Section 411 of the Act diminishes the right to due process for immigrants by expanding the term, "engage in terrorist activity" to include any use of a weapon, as well as non-violent acts of fundraising for "suspect" organizations.[78] Section 215 of the Act redefines the standards of probable cause as outlined in the Fourth Amendment. All of these sections of the Act increased federal powers in the name of enhanced national security.

While the USA PATRIOT Act was heralded as a comprehensive legislative response to the threat of terrorism in the post-9/11 period, there were serious criticisms leveled against this piece of legislation following its enactment. The primary concern over the Act stemmed from its potential to violate citizens' Fourth Amendment rights. The most controversial measures of the Act involved information sharing from criminal investigations among the FBI and other intelligence agencies. The use of roving wiretaps across multiple communication devices, which facilitated government access to business records, and "sneak and peek" search warrants that allowed the authorities to search homes and businesses without prior notice were also considered to be questionable violations of civil liberties.[79] In reviewing terms of the Act set to expire as a result of the 2005 sunset clause, Representative Bob Barr noted that, "When Congress created foreign intelligence roving wiretap authority in the USA PATRIOT Act, it failed to include the checks against abuse present in the analogous criminal statute. This is troubling because, as roving wiretaps attach to the target of the surveillance and not to the individual communications device, they provide a far more extensive and intrusive record of a

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[76] Jill Hills, "What's New? War, Censorship, and Global Transmission," *The International Communication Gazette* 68:3 (2006): 206.
[77] USA PATRIOT Act
[78] Lisa Funnegan Abdolian and Harold Takooshian, "The USA PATRIOT Act: Civil Liberties, the Media, and Public Opinion," *Fordham Urban Law Journal* 30:4 (2001): 1431.
[79] Congressional Digest, "Civil Liberties in Times of War: 2005 – 2006 Policy Debate Topic," (September 2005): 193.

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person's communications."[80] The concerns over provisions of the USA PATRIOT Act were ultimately overlooked by Congress in favor of a speedy legislative response to the events of 9/11.

The Deference Thesis and the USA PATRIOT Act

In keeping with the principles of the deference thesis, Congress can be seen to have acquiesced to the demands of the executive with regards to the terms of the USA PATRIOT Act. This deference to the executive branch is most evident in the strong bilateral cooperation between Republicans and Democrats in passing the Act. The Act was passed by large majorities in both the Senate (98-1) and the House (357-66) without public hearings or debate.[81] The fact that only one Senator, Russell Feingold of Wisconsin, and only sixty-six members of the House voted against the Act speak to Congress' commitment to passing this piece of legislation quickly.[82] Despite concerns about the potential for governmental abuse of power and a loss of personal privacy, both Republican and Democratic representatives agreed to a 'sunset clause' that required over a dozen provisions in the Act to expire on December 31, 2005 pending Congressional renewal. Representatives were willing to endorse the Act in spite of its similarities to the Antiterrorism Act of 1996, which had already been ruled partially unconstitutional by federal courts.[83]

The USA PATRIOT Act was enacted with minimal Congressional deliberation. Covering three hundred and fifty different subject areas, as well as forty different agencies; this Act was the largest piece of anti-terrorism legislation ever tabled in the United States. While issues are generally debated for months before being put to a vote, the USA PATRIOT Act was pushed through Congress in less than a month. In order to speed up the implementation of this Act, members of both the House and Senate agreed that the law should be, "… hammered out in private negotiations between the Justice Department and party leaders."[84] As a result, there were no final hearings to allow dissenters to voice their concerns and no committee reports on the implications of the legislation. Shockingly, many members of Congress were so eager to demonstrate their willingness to cooperate that they did not take the time to read all three hundred and forty-two pages of the Act.[85] The bipartisan cooperation in passing the USA PATRIOT Act was a testament to the desire of Congress to enact legislation quickly in response to the terrorist attacks. The bipartisan cooperation of members of the American policy elite is indicative of this group's acceptance of the securitizing move made by President Bush.

The willingness of House and Senate Republicans and Democrats to cooperate in passing the USA PATRIOT Act was compounded by their shared belief in the importance of

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[80] Prepared Statement of Bob Barr, USA PATRIOT Act, "Hearing Before the Select Committee on Intelligence of the United States Senate One Hundred Ninth Congress First Session," (April 19, 2005; April 27, 2005; May 24, 2005); Printed for the use of the Select Committee on Intelligence. U.S. Government Printing Office Washington: 2006b, available at: http://www.acess.gpo.gov/congress/senate.

[81] Finnegan et. al., "The USA PATRIOT Act, 1429.

[82] Gouvin, "Bringing Out the Big Guns," 961.

[83] Finnegan et. al., "The USA PATRIOT Act, 1429.

[84] Gouvin, "Bringing Out the Big Guns," 961.

[85] Conference Reference

enacting immediate legislation dealing with the threat of terrorism. This need to respond to the crisis as quickly as possible is what fueled Congressional acceptance for the 'sunset clause' contained in the Act. There was agreement that it was better to enact the legislation immediately, and worry about the sixteen questionable provisions of the Act as well as the "lone wolf" amendment to the Foreign Intelligence Surveillance Act when they expired in 2005.

Statements made by members of the policy elite at the 2005 Select Committee on Intelligence of the United States Senate hearing on the renewal of provisions of the USA PATRIOT Act demonstrate the commitment of members of Congress to passing this legislation. Bob Barr, Georgia's Seventh District Representative in the U.S. House of Representatives from 1995 to 2003 noted that, "Even though I voted for the USA PATRIOT Act in October 2001, as did many of my colleagues, I did so with the understanding that it was an extraordinary measure for an extraordinary threat; that it would be used exclusively, or at least primarily, in the context of important antiterrorism cases; and that the Department of Justice would be cautious in its implementation and forthcoming in providing information on its use to the Congress and the American people."[86] John D. Rockefeller III, Vice Chairman of the committee similarly remarked that,

"There were good reasons to act quickly after the September 11 attacks. Because of the need for speed then it was wise to require, through a sunset provision, that there be a further evaluation of portions of the Act after several years of experience."[87]
James X. Dempsey, Executive Director of the Center for Democracy and Technology, also echoed this sentiment about the need to act quickly to legislate against the threat of terrorism, noting that, "In 2001, in response to some legitimate complaints of the Administration that the prior rules for counterterrorism investigations were unreasonable or were out of date or ill-suited to the threat of terrorism, Congress adopted the PATRIOT ACT… In the anxiety of those weeks after 9/11, Congress eliminated the old rules…"[88]

These statements, made by various members of the U.S. policy elite, are evidence of the perceived need by Congress to act quickly to demonstrate to the public that the government was taking seriously the renewed threat of terrorism. Members of the House and Senate were willing to defer authority to the executive – President Bush – so as to expedite this process.

The Canadian Policy Elite in the Post-9/11 Period

Canada's Past Encounters with Terrorism

Contrary to reports made by the American media following the attacks on that state, Canada had not been immune to terrorist attacks prior to 9/11. The response of Canadian

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[86] Barr, "Hearing Before the Select Committee on Intelligence of the United States Senate One Hundred Ninth Congress First Session."
[87] Prepared statement of John D. Rockefeller III, Ibid.
[88] Prepared statement of James X. Dempsey, Ibid.

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policymakers to the September 11 attacks on the United States borrowed heavily from lessons learned by dealing with both the FLQ crisis in 1970, and the Air India bombing in 1985. These two past encounters with terrorist actors became part of the bureaucratic institutional memory, and Canadian policymakers drew on these events when shaping their policy response to the American tragedy. Discussions with Canadian policymakers responsible for drafting the state's policy response to the 9/11 attacks universally emphasized the importance of understanding Canada's previous experiences with terrorism in order to appreciate the evolution of this country's counter-terrorism policies.

1963- 1968: The FLQ and the October Crisis

Between 1963 and 1973, The Quebec Liberation Front (FLQ) sought to establish an autonomous French state of Quebec that would operate independently of the rest of Canada. The FLQ established connections with Algeria and Cuba and even sent members of its organization to the Middle East to train at Palestinian resistance camps.[89] From 1963 until 1968, the group's mandate was based on traditional nationalistic sentiment, and its main demand was the separation of the province of Quebec from the rest of Canada.[90] During this period, the organization employed demand-terrorism techniques and perpetuated small bomb attacks in order to get media attention. By late 1968, the FLQ evolved from demand-like tactics to revolutionary terror, and became increasingly violent. These revolutionary tactics began in January of 1969 when a bomb exploded near the home of the Montreal police chief. In February of that year, a bomb at the Montreal Stock Exchange seriously injured thirty people. On June 24, 1970 – the National Day Of French Canadians (St. Jean Baptiste Day) – one person was killed when FLQ operatives set off a bomb at National Defense Headquarters in Ottawa.[91] This escalation in attacks culminated in the October 5, 1970 kidnapping of British diplomat, James Cross at the consulate in Montreal by one cell of the FLQ, and the kidnapping and execution of Quebec Cabinet Minister, Pierre Laporte, by another cell. These kidnappings and the subsequent response of the federal government to these actions came to be known as the October Crisis, and marked the first time that the Canadian federal government had to deal directly with terrorism in Canada.

In response to the October Crisis, Prime Minister Pierre Elliott Trudeau proclaimed the "War Measures Act" to be in effect at four o'clock in the morning on October 16, 1970. The next day, Minister Laporte was found strangled to death, his body located at St. Hubert Airport after midnight on October 18. The following day, the House of Commons passed a motion supporting the government's introduction of the War Measures Act. This Act, originally introduced in 1914 before the beginning of the First World War, was adopted to, "… protect national security and to prepare for the conditions of war."[92] The

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[89] Jeffrey Ian Ross, "The Rise and Fall of Quebec Separatist Terrorism: A Qualitative Approach of Factors from Two Models," *Studies in Conflict and Terrorism* 18:4 (1995): 287.

[90] For further elaboration refer to Louis Fournier, *FLQ: Histoire D'Un Movement Clandestine* (Montreal: Editions Michele Brule Inc., 1998).

[91] For further description of the escalation of FLQ tactics leading up to the 1970 October Crisis see: Stephane Leman-Langlois and Jean-Paul Brodeur, "Terrorism Old and New," in Andrew Millie and Dilip K. Das, eds., *Contemporary Issues in Law Enforcement and Policing* (E-Book: CRC Press, 2008): 91 – 92.

[92] Emergencies Act <http://publications.gc.ca/Collection-R/LoPBdP/BP/prb0114-e.htm>

Act was applicable to the October Crisis under its "Public Order Emergency" clause, which stipulated that, "Where the Governor in Council believes that a public order emergency exists in Canada, he or she could, on reasonable grounds, after consultation with the Lieutenant Governor in Council of the province or provinces in question, issue a proclamation declaring this to be the case. If the public order emergency exists in only one province, such a declaration should issue only if the Lieutenant Governor in Council is in agreement (ss. 17(1) and 25)"[93]

The War Measures Act greatly enhanced the authoritative power of the state, and allowed for the arrest and detention of anyone suspected of being involved in the FLQ attacks. However, this Act did not define what was meant by "terrorism" in the context of the Canadian state. Instead, the FLQ and other groups that advocated the use of force or the commission of crime as a means of accomplishing governmental change within Canada were declared "unlawful associations."[94] While the War Measures Act served to effectively end the FLQ crisis, it did not establish a permanent Canadian response to episodes of domestic terrorism.

1985: The Bombing of Air India Flight 182

Canada once again experienced domestic terrorism with the 1985 bombing of Air India Flight 182 aboard the "Kanishka", which killed all three hundred and twenty-nine passengers on board, two hundred and eighty of whom were Canadian citizens[95]. This attack was the work of members of the Sikh militant group, Babbar Khalsa, which had a network of operatives in Canada. Although Canadian intelligence assets had knowledge of a plot to plant a bomb on an Air India flight originating in Canada, a lack of organizational coordination, and the absence of legislation clearly delineating the parameters of a domestic terrorist attack, meant that this tragedy went largely unstudied until 2006. Following a (largely unsuccessful) trial of those deemed responsible for the bombing, the Canadian government called the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. The Commission's final report, "Air India Flight 182: A Canadian Tragedy" recognized that Canada's past experiences with domestic terrorism are an "… important opportunity to learn from the past to better secure our future."[96] It is important to note that Canada was directly affected by the 9/11 terrorist attacks on the United States, but not in the same way as its southern neighbor. Twenty-six Canadians were killed in the attacks on September 11, 2001. While Canadian citizens were killed by the attacks on the United States, the fact that these attacks did not take place on Canadian soil did not prompt the government to see the events of 9/11 as a direct attack on Canada. Drawing on past experiences with domestic terrorism, Canadian

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[93] Ibid.

[94] Kent Roach. *September 11: Consequences for Canada.* (Montreal: McGill-Queen's University Press, 2003), p. 29.

[95] Testimony from CSIS Experts on the Air India bombing at the 2012 "Kanishka Conference" in Ottawa, Ontario. (November 7-8, 2012).

[96] Public Safety Canada. "The Government of Canada Response to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182." (June 19, 2012).
<http://www.publicsafety.gc.ca/prg/ns/ai182/res-rep-eng.aspx>

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policymakers took a cautious approach to developing legislation aimed at combating the threat posed by the potential for future terrorist attacks in North America.

Consultation with members of the policy elite from CSIS, the Department of National Defense, Public Safety, and the Canadian Revenue Agency all asserted how discussions of the Air India bombing led to the development of a Canadian definition for "terrorism."[97] Members of the policy elite noted that they drew on Canada's experiences with domestic terrorism when involved in drafting counter-terrorism policies for Canada in the wake of the 9/11 attacks on the United States. There was general consensus that the Canadian response should demonstrate an evolution in Canadian law and policies that reflects lessons learned from past failures in addressing acts of domestic terrorism. These members of the policy elite sought to draw on Canada's bureaucratic memory in order to avoid repeating mistakes of the past with regards to evidence reporting and clearly delineating the legal boundaries of "terrorist offences." These lessons culminated in the creation of Bill C-36, more commonly referred to as the "Anti-Terrorism Act."

Bill C-36, Canada's Anti-Terrorism Act

Like its southern neighbor, Canada sought to counter the threat of terrorism by enacting legislation that rendered acts of "terrorism" illegal, and provided the means of prosecuting those engaged in planning or carrying out terrorist activities against the state. The Canadian government introduced Bill C-36, The Anti-Terrorism Act, in response to calls to action from both the United States and the United Nations. An examination of Bill C-36 reveals more evidence of policy diffusion than of policy convergence when comparing the Canadian legislation to its American counterpart, the USA PATRIOT Act. This policy diffusion is the result of intense debate amongst members of the Canadian policy elite over the terms and conditions of the Canadian legislation. The Anti-Terrorism Act faced opposition from both members of Parliament and the Senate, and also from members of civil society groups. The debate arising from this opposition led to amendments of the legislation so as to balance the perceived need for counter-terrorism legislation with protecting so-called "Canadian values" enshrined in the Charter of Rights and Freedoms. Ultimately, the compromise surrounding the enactment of Bill C-36 demonstrates that the response of members of the Canadian policy elite was not consistent with the process of securitization. In contrast to the USA PATRIOT Act, Bill C-36 was not a catchall response to counter-terrorism. This legislation was merely the first in a series of Acts aimed at addressing homeland security and counter-terrorism in Canada, and was followed almost immediately by the Public Safety Act. Instead of the deference to elite authority shown by the American policy elite to the executive branch of government, members of the Canadian policy elite can be seen to have consented to pressures from the U.S. and the United Nations to legislate against the threat of terrorism. In Canada, the threat of terrorism did not supersede the realm of tradition politics so as to become securitized. Instead, counter-terrorism legislation was debated alongside other issues relevant to the Canadian polity at that time.

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[97] DEFINITION AND BACKGROUND

Canada's Legislative Response to Terrorism: Convergence and Diffusion from the American Model

Media commentators commonly refer to Bill C-36, The Anti-terrorism Act as "Canada's PATRIOT Act." This false comparison led to is an overestimation of the similarities between the two pieces of legislation. Critics, such as the former head of CSIS, Reid Morden, charged that, "… the anti-terrorist legislative changes brought before Parliament were largely the result of pressures to keep up with the neighbors."[98] While it is true that "…Canada moved swiftly to change its legislation to reflect the new U.S. priorities…"[99], the response of members of the policy elite in Canada was markedly different from American attempts to "legislate away the threat." Canada's legislative response to counter-terrorism was precipitated by a section in the USA PATRIOT Act entitled, "Protecting the Northern Border" which singled out the U.S.'s shared border with Canada as a potential soft target for would-be terrorists seeking to gain entry into the United States. This American fear was predicated on the notion that, as primary targets are hardened by enhanced security measures, terrorists would seek out softer targets in other countries.

Canada's desire to respond to American concerns about counter-terrorism policy in this state served two purposes. First, discussions with members of the Canadian policy elite, particularly those engaged in intelligence collection and dissemination, recognized that there was the potential for al-Qaeda, or an "AQ-like" non-state organization to carry out an attack on Canadian soil following the 9/11 attack on the United States.[100] Reg Whitaker expresses this concern, noting, "As a liberal, capitalist, 'infidel' democracy allied closely to the United States, Canada is obviously implicated as a target of radical Islamist terror. The apparently authentic statement issued by Osama bin Laden in the fall of 2002 specifically threatened Canada along with other Western states associated with the United States." [101]

Intelligence collected by NATO forces in Afghanistan following the attacks on the United States listed other Western states that al-Qaeda sought to "punish" for their close relationships with the United States. Canada was included in this list. Further, members of the Canadian policy elite, on advisement from the Department of National Defense, recognized that Canada's legislative and administrative response to the potential for biological or nuclear attacks as well as the state's emergency preparedness quotient lagged behind those of the United States and its Department of Homeland Security.

The second purpose of Canada's legislative response to counter-terrorism was the recognition by members of the policy elite, of the state's need to limit the collateral

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[98] Reid Morden, "Finding the Right Balance," *Policy Options* 23:6 (2002): 47.

[99] Patrick J. Smith, "Anti-Terrorism in North America: Is There Convergence or Divergence in Canadian and U.S. Legislative Responses to 9/11 and the U.S. – Canada Border," In Emmanuel Brunet-Jailly, ed., *Borderlands: Comparing Border Security in North America and Europe* (Ottawa: University of Ottawa Press, 2007), 286.

[100] From Interviews… See notes

[101] Reg Whitaker, "Keeping Up With the Neighbours? Canadian Responses to 9/11 in Historical and Comparative Context," *Osgoode Hall Law Journal,* 41:2 (2003), 252.

economic harm to the Canadian economy that would result from an American loss of confidence in Canadian security measures. There was unspoken consensus that U.S. homeland security would be protected either at the Canada-U.S. border or around a wider North American perimeter. If security were imposed along the Canada-U.S. border by the United States, it would come at an economic cost unacceptable to Canada, which sends more than 85 percent of its exports to the United States. A closing of the northern American border would decimate Canadian industry, which employs a just-in-time trade model of shipping goods to the United States. Several Canadian counter-terrorism policies were adopted by members of the policy elite out of the necessity of complying with pre-existing American policies. For example, Canada's Anti-terrorism Act included policies relating to federal aviation regulations, which were in direct response to the American policy of demanding advance production of a range of personal data on passengers arriving from abroad at U.S. airports. Whitaker explains that, "Canada had no choice in this matter, short of losing landing rights for Canadian carriers, even though this American policy did necessitate overriding Canadian privacy law."[102] While some policy convergence between the USA PATRIOT Act and the Canadian Anti-terrorism Act can be identified, often this convergence is the result of understanding by members of the Canadian policy elite that certain policies would have to be adopted in order to secure Canadian economic interests. In other areas, analysis of the Anti-terrorism Act discloses little that can be seen as directly responding to American demands, as such, or reflecting American provisions and practices. There was recognition that, "Canadian public opinion demands distance from the appearance that Canadian policy is being dictated from Washington. This latter tendency is heightened when the U.S. leadership is perceived by many in Canada as immoderate and potentially dangerous…."[103] Canada's counter-terrorism legislation has much more in common with British and Australian policies.

Responding to the UN: Canada's Counter-terrorism Legislative Response
In addition to responding to American concerns about Canadian security legislation, the federal government and members of the Canadian policy elite sought to respond to the United Nations' resolutions calling for member states to enact counter-terrorism legislation. Most relevant for Canada was UN Security Council Resolution 1373, which stipulated that, "… all states should prevent and suppress the financing of terrorism, as well as criminalize the willful provision or collection of funds for such acts. The funds, financial assets, and economic resources of those who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts and of persons and entities acting on behalf of terrorists should also be frozen without delay."[104]

The Resolution further stated that member states would be expected to, "… prevent those who finance, plan, facilitate, or commit terrorist acts from using their respective territories for those purposes against other countries and their citizens. States should also ensure that anyone who has participated in the financing, planning, preparation, or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. They

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[102] Whitaker, "Keeping Up With the Neighbours?" 258.
[103] Ibid, 264.
[104] United Nations Security Council Resolution 1373 (2001), available at: *http://www.un.org/News/Press/docs/2001/sc7158.doc.htm*.

should also ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served."[105]

The Canadian government took the position that this UN Resolution required that Bill C-36 become law by December 18, 2001, in time for Canada to report to the new United Nations Counter-Terrorism Committee. UN Security Council binding Resolution 1373 called on all states under the mandatory provisions of chapter VII of the United Nations Charter to ensure that terrorism was treated as a serious crime, but it did not attempt to define terrorism.[106] The necessity of defining terrorism before legislating against this threat resulted in Bill C-36, The Anti-terrorism Act, which was closer in nature to legislation passed by Britain and Australia than to that of the United States.

Bill C-36: The Anti-Terrorism Act

Canada's attempt to satisfy both American and United Nations' expectations regarding counter-terrorism legislation resulted in Bill C-36, The Anti-Terrorism Act, which was introduced in the House of Commons on October 15, 2001. Bill C-36 had four central objectives: (1) to stop terrorists from entering Canada and to protect citizens from future terrorists attacks, (2) to design and implement tools aimed at identifying, prosecuting, convicting, and punishing would-be terrorists, (3) to prevent would-be terrorists from affecting Canada-U.S. cross border relations and negatively affecting the Canadian economy, and, finally, (4) to work with the international community to bring terrorists to justice and to address the root causes of insurgency and terrorism.[107] One of the most important facets of this Act was its creation of a Canadian definition of terrorism. This Act enabled the Cabinet, "… to designate groups as 'terrorist' with only a limited possibility of judicial review of its decision, created a range of new offences, expanded police powers, and provided for preventive arrest."[108] Bill C-36 was produced with record speed. According to Kent Roach, its main sections, "… were drafted between September 11 and October 13, with the crucial definition of terrorism discussed up until the last minute before the bill was introduced in Parliament."[109] Following a truncated debate after the third reading of the bill, the Anti-terrorism Act was passed on November 29, 2001, by a vote of 189 in favor to 47 opposed, and was later approved without amendments by the Senate.[110] Bill C-36 was proclaimed to be in force on December 24, 2001, in time to be included in Canada's report to the United Nations on the state's compliance with UN Security Council Resolution 1373.

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[105] United Nations Security Council Resolution 1373 (2001).

[106] Kent Roach, "The Canadian Parliamentary Review of the Anti-Terrorism Act," *IRPP Choices* 13:5 (September 2007): 5.

[107] Department of Justice (Canada), "News Release: 'Government of Canada Introduces Anti-Terrorism Act," (October 15, 2001), available at: *http://www.canada.justice.ca/en/news/nr/2001/doc_27785.htm*.

[108] Patrick J. Smith, "Anti-Terrorism in North America: Is There Convergence or Divergence in Canadian and U.S. Legislative Responses to 9/11 and the U.S. – Canada Border," In Emmanuel Brunet-Jailly, ed., *Borderlands: Comparing Border Security in North America and Europe* (Ottawa: University of Ottawa Press, 2007): 286.

[109] Roach, September 11: Consequences for Canada. 21.

[110] Ibid.

Bill C-36: The Product of Intense Debate

The Absence of the Deference Thesis and the Relevance of Debate

Canadian policymakers did not show the deference to the executive demonstrated by American policy makers and members of the policy elite to the American President. Instead, the resulting legislation was the product of intense debate between members of Parliament and the Senate, and members of interested civil society groups. This debate, and the lack of deference to the executive branch of government, further demonstrates the absence of securitization in Canada. The philosophical variant of securitization theory can be seen as constituting a continuum. First, an authorized speaker of security articulates a threat as posing an existential and imminent danger to the state. Second, the elite audience either accepts of rejects this threat and transmits its opinion to the populist audience, who must then accept or reject the threat articulation in their own right. The creation of a feedback loop allowing for the inclusion of policy debate and public insight into the creation of a given security policy demonstrates that there has been no attempt to securitize the policy issue. In this way, recognition of the deference thesis has important implications for determining whether or not the audience must accept or reject a given threat as posing an existential risk to the state. While members of the American policy elite accepted that the threat of terrorism in the post-9/11 period posed an imminent danger to citizens of the state and thus deferred to the President in crafting a legislative response to that threat, this was not the case in Canada. Members of the Canadian policy elite expressed dissent at the executive's vision for the state's counter-terrorism policy. Canadian policymakers actively debated various facets of the legislation and sought to amend aspects of Bill C-36 that did not serve their vision of the "Canadian interest." In addition to Parliamentary and Senate debates over the Bill, the opinions of members of various civil society groups were also considered. The acceptance and inclusion of public opinion into the policy making process further demonstrates a lack of securitization. Instead of transmitting an "official view" of a threat to the audience, the executive and the elite audience welcomed public input into crafting the state's legislative response.

Bill C-36: Debate and Dissent Within the Government

Within the Canadian government, there was important opposition to sections of Bill C-36, The Anti-Terrorism Act. Various governmental actors, including the Privacy Commissioner, the Information Commissioner, and the Canadian Human Rights Commissioner all voiced concerns about terms contained in the bill. An overview of these concerns demonstrates the lack of executive deference. George Radwanski, then Canadian Privacy Commissioner, expressed his strong concerns about the preemption of privacy legislation once the Attorney General issued a certificate prohibiting access to information to protect national security, national defense, or international relations.[111] Likewise, Liberal backbencher and noted human rights lawyer, Irwin Cotler publicly opposed Bill C-36, and identified what he determined to be eleven 'deficiencies' with the legislation. These included, "…over breadth in the bill's definition of terrorism, the lack of prior notice to a group listed as a terrorist group, concerns about access to information and the right to privacy, the need to sunset provisions for preventive arrests and

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[111] Privacy Commissioner of Canada, News Releases, November 8, 2001 and November 21, 2001.

investigative hearings, the need for charities to have a due diligence defense if their charitable status was revoked, and the need for more oversight mechanisms, such as a parliamentary officer to monitor and supervise the legislation."[112]

Concerns about the legislation resulted in uncharacteristic breaches in Cabinet solidarity pertaining to support of the bill. For example, Liberal Fisheries Minister, Herb Dhaliwal noted that, "Civil liberties are extremely important to Canadians… certainly as someone from the ethnic community and a visible minority this is something extremely important to me."[113]

The Anti-terrorism Act was hotly debated in various governmental committees following its introduction in the House. One of these committees, the Special Senate Committee on Bill C-36 issued an important bi-partisan report on November 1, 2001, which reflected both the Liberal majority and Conservative minority Senate position on the bill. This report called for extensive revisions to Bill C-36 including: changes to the definition of terrorism, enactment of a non-discrimination clause, the appointment of an officer of Parliament to monitor the implementation of the bill, reporting requirements on actions taken under the bill, and judicial review of time restrictions on security certificates to protect information from disclosure. The report also called for a five-year sunset clause that would force the reintroduction of the bill in the future.[114] The bi-partisan findings of this special committee demonstrate the opinion of the policy elite, that Canada's legislative response to counter-terrorism must be balanced with its citizens' Charter rights.

Bill C-36: Opposition from Civil Society Groups

Governmental debate over the provisions of Bill C-36 was mirrored by debates that took place within civil society groups about the legislation. Of primary concern was that the original wording of the bill would have equated illegal strikes and anti-globalization protests as 'terrorist' acts.[115] Much like the governmental critics of the legislation, civil society groups expressed trepidations over some of the powers and controls outlined in the act. They were especially concerned about, "… the power to detain a suspect without charge, with judicial approval, for 72 hours to a year if the person did not agree to reasonable restrictions on his or her behavior as a condition of release; the possibility of up to ten years imprisonment for 'legally participating or contributing' to the activities of a known terrorist group; the requirement to testify at 'investigative hearings'; and the new power given to the Solicitor General to create a list of terrorists on 'reasonable grounds' without any requirement to notify individuals or groups that they were on the

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[112] Irwin Cotler, "Thinking Outside the Box: Foundational Principles for a Counter-Terrorism Law and Policy," in Daniels, Macklem, and Roach, eds., *The Security of Freedom,* 65.

[113] T. MacCharles and A. Thompson, "Anti-terrorism bill worries Dhaliwal," *Toronto Star* (October 30, 2001): A2.

[114] Special Senate Committee on Bill C-36, First Report. (November 1, 2001).

[115] Refer to Roach, September 11: Consequences for Canada, 8.

list."[116] Representatives from various groups spoke out about their concerns that Bill C-36 would unnecessarily infringe on the civil liberties of Canadian citizens.

The Anti-terrorism Act drew criticism from a wide array of civil society groups including: those representing Aboriginal peoples, unions, charities, refugees, lawyers, and watchdog review agencies. A sampling of some of the statements made by these groups demonstrates the diverse input that influenced the development of Bill C-36. These civil society groups addressed issues such as the definition of terrorist activities, and recommended that an exemption from the definition for strikes and protests not be limited to lawful protests and strikes. The result of the criticism from these groups has been described as, "… the most balanced example of legislative activism to date, and one that demonstrated the ability of Parliament to take rights considerations into account."[117] These civil society groups were able to put a human face on those individuals who might be harmed by the broad definitions contained in first drafts of the bill. Civil rights lawyer, Alan Borovoy, the head of the Canadian Civil Liberties Association, presented his concerns to parliamentary groups and to the media arguing that, "… the bill should require a judicial warrant before it authorized either the secret recordings of Canadians speaking with people in other countries or the declaration of a group or an individual as a terrorist."[118] Likewise, Eric Rice, the President of the Canadian Bar Association, following consultations with more than two hundred lawyers affiliated with his group, raised concerns about, "investigative hearings, broad terrorism offences, and mandatory sentencing provisions that would undermine the operation of the justice system."[119] These criticisms of the bill founded on legal grounds were accompanied by a host of concerns from other groups in society.

Various religious and ethnic groups issued statements to the media and made presentations before parliamentary groups expressing their concerns about the proposed legislation. For example, a representative of the Canadian Council of Churches and Catholic Bishops argued that the bill would negatively impact on charities. He noted that, of these charities, "… nearly one half of which are religious organizations… the section (of Bill C-36) could catch church groups that in good faith, and after due diligence, provide funds to their overseas partners for humanitarian or development assistance."[120] Representatives of the National Jewish Congress of Canada and the Canadian Buddhist Association echoed his sentiments.[121] Speaking at a Special Senate Committee meeting, a representative of the Canadian Arab Federation expressed concerns that Bill C-36,

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[116] Patrick J. Smith, "Anti-Terrorism in North America: Is There Convergence or Divergence in Canadian and U.S. Legislative Responses to 9/11 and the U.S. – Canada Border," In Emmanuel Brunet-Jailly, ed., *Borderlands: Comparing Border Security in North America and Europe* (Ottawa: University of Ottawa Press, 2007), 299.

[117] Kelly, James, *Governing With the Charter* (Vancouver: University of British Columbia Press, 2005), 246.

[118] T. Tyler, "Law Societies Seek Changes to Terror Bills," *Toronto Star* (4 December, 2001).

[119] Quoted in S. McIntyre, "Redefining Reformism: The Consultations That Shaped Bill C-49," in J. Roberts and R. Mohr, eds., *Confronting Sexual Assault: A Decade of Legal and Social Change* (Toronto: University of Toronto Press, 1994), 59.

[120] Standing Committee on Justice and Human Rights (1 November, 2001), 1540.

[121] Ibid.

combined with other legal initiatives, "… was an attempt to stifle the current evolution of human rights culture among the general population…"[122] Similarly, speaking before the Standing Committee on Justice and Human Rights, Grand Chief Matthew Coon Come of the Assembly of First Nations argued that the proposed legislation would lead to a proliferation of events such as the killing of Dudley George at Ipperwash. In his presentation, he sought to, "… demonstrate the risk posed to First Nations by legislation that gives heightened powers to police, narrows the civil rights of those involved in legitimate dissent and protest activities and limits or suspends the civil rights of those perceived by the government to be involved in 'terrorist' activities."[123]

Relevance of Debate Over Bill C-36

Ultimately, members of the policy elite had to amend aspects of the Anti-terrorism Act so as to address concerns raised by members of Parliament and the Senate, and by civil society groups. These amendments were significant because they indicated that the policy elite were conscientious of public opinion, and were more concerned with ensuring that the public would accept the terms of the final legislation. The allowance of dissenting opinions regarding the original draft of the bill signified the absence of the securitization process. While those who opposed the USA PATRIOT Act in the United States were made to feel that they were some how contradicting what was in the best interest of that state, Roach notes that, "critics of Bill C-36 were generally not made to feel that they were being disloyal or unpatriotic."[124] Ultimately, the Anti-terrorism Act was amended to include a 'sunset' provision on preventative arrest and investigative hearings, a new provision requiring the federal Attorney General and Solicitor General and their provincial equivalents to report annually to Parliament on any use of preventative arrest or investigative hearings, and, a separate interpretive clause for greater clarity regarding the protection of political, religious, or ideological beliefs and expressions.[125] Members of the policy elite responded to the concerns of critics of the legislation and amended the bill accordingly.

While Bill C-36 was ultimately passed by the government invoking closure, which limited Parliament to two days of debate when the bill was reported back after the third reading, the amendments made to the final draft of the act took into account the criticisms presented by different groups. The invocation of closure was not intended to stifle the input of civil society groups, but rather to allow the government to meet the deadline set by the UN Security Council for reporting on counter-terrorism legislation. The Minister of Justice, Anne McLellan, defended closure noting that, "our allies around the world are moving and it would be irresponsible for us, as a government, not to move."[126] Forcing closure indicates that the policy elite was more concerned with protecting Canadian interests by keeping our allies satisfied than with convincing every member of the public that terrorism posed an imminent threat to the state.

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[122] Special Senate Committee on Bill C-36 (6 December, 2001).
[123] Standing Committee on Justice and Human Rights (1 November, 2001), 1540.
[124] Roach, September 11: Consequences for Canada, 56.
[125] Smith, "Finding the Right Balance," 299 – 300.
[126] Hansard, 27 November 2001, p. 1000, per House Leader Don Boudria. (Not Sure what citation this is)

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The Other Half of the Elite Audience

The members of the policy elite are only half of the elite audience group. While this group is the first to interact with the authorized speakers of security, they also collaborate with the second component of the elite audience – the media. The media reports on the policies and institutions created by the policy elite. In this way, the media translates the policy elite audience's response to the articulation of a given threat to the populist audience. The role played by the media in framing and shaping public opinion of distant events points to the importance of considering the relevance of media frames in the process of securitizing a given issue.